

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA
for the use and benefit of
D. GINGERICH CONCRETE
& MASONRY, INC.,

Plaintiff,

V.

COAKLEY WILLIAMS CONSTRUCTION, INC.
and THE CONTINENTAL INSURANCE
COMPANY,

Defendants.

Civil Action No.
1:05-cv-00104-GMS

JURY TRIAL DEMANDED

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM OF
DEFENDANTS COAKLEY WILLIAMS CONSTRUCTION, INC.
AND THE CONTINENTAL INSURANCE COMPANY**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.

10. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

11. Answering Defendants are without knowledge or information sufficient to form a belief as to when Gingerich last performed labor and supplied material and therefore is are without knowledge or information sufficient to form a belief as to whether Gingerich has filed this action within one year time period. Denied that Gingerich has satisfied the conditions of the Bond.

Count I
Breach of Contract – CWC

12. Answering Defendants repeat and reaver their answers to paragraphs 1 through 11, inclusive, of the Plaintiff's Complaint, as if expressly rewritten and set forth herein.

13. Denied.

14. Denied

15. Denied.

16. Denied.

Count II
Bond Claim

17. Answering Defendants repeat and reaver their answers to paragraphs 1 through 16, inclusive, of the Plaintiff's Complaint, as if expressly rewritten and set forth herein.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

Count III
Breach of Contract-Continental

24. Answering Defendants repeat and reaver their answers to paragraphs 1 through 23, inclusive, of the Plaintiff's Complaint, as if expressly rewritten and set forth herein.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

Count IV
Quantum Meruit-CWC

29. Answering Defendants repeat and reaver their answers to paragraphs 1 through 28, inclusive, of the Plaintiff's Complaint, as if expressly rewritten and set forth herein.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

Count V
Violation of 6 Del. C. §3506-CWC

34. Answering Defendants repeat and reaver their answers to paragraphs 1 through 33, inclusive, of the Plaintiff's Complaint, as if expressly rewritten and set forth herein.

35. The provisions of 6 *Del. C.* §3506 *et seq.* Speak for themselves.

36. Denied.

37. Denied.

Count VI
General Prayer for Relief

38. Answering Defendants repeat and reaver their answers to paragraphs 1 through 37, inclusive, of the Plaintiff's Complaint, as if expressly rewritten and set forth herein.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is precluded from recovery under the Miller Act (40 U.S.C. § 3131 *et seq.*) in so far as Plaintiff abandoned the Project.

THIRD AFFIRMATIVE DEFENSE

Plaintiff purports to base its action and jurisdiction on the provisions of the Miller Act (40 U.S.C. A. § 3131 *et seq.*). Defendants maintains that this matter is not properly before this Court under the Miller Act and therefore, the Court lacks subject matter jurisdiction over the State Court claims in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

Service of process was improper and/or insufficient as one or both of the Defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred or limited by the applicable statute of limitations of the State of Delaware and/or Federal Law.

SIXTH AFFIRMATIVE DEFENSE

The liability of CNA, if any, is limited by the penal sum of the Bond.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff has been paid by CWC for the work performed under the Subcontract.

COUNTERCLAIM

Pursuant to the provisions of Rule 13 of the Federal Rules of Civil Procedure, Defendants state the following counterclaim against Plaintiff.

1. Gingerich failed to fully perform its obligations under the Subcontract with CWC by failing to perform its work in a satisfactory manner, by failing to correct construction defects due to poor workmanship and by removing its workers and abandoning the Project.

2. As a result of Gingerich's breach of the subcontract, CWC was required to incur additional expenses of performing certain work and of engaging other contractors to correct construction defects resulting from poor workmanship of Gingerich and to complete the remainder of the work under called for under the Subcontract for the Project.

WHEREFORE, Defendants pray that the Plaintiff's Complaint be dismissed with prejudice and that all costs be assessed against Plaintiff, that judgment be entered in favor of Defendants and against Plaintiff for the costs incurred by CWC for correcting construction defects and completing the Project, pre-judgment and post-judgment interest thereon at the prevailing legal rate, all costs of this action and such other and further relief as the Court deems just and equitable.

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

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Attorneys for Defendants

Dated: June 3, 2005

CERTIFICATE OF SERVICE

I, Roger Truemper, Esq., hereby certify that I have served upon all persons listed below a true and correct copy of the Answer, Affirmative Defenses and Counterclaim of Defendants Coakley and Williams Construction, Inc. and the Continental Insurance Company this date via regular mail as follows:

Victoria K. Petrone, Esq.
TIGHE COTTRELL & LOGAN, P.A.
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Dated: June 3, 2005